

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 347 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VANSDA

Versus

STATE OF GUJARAT

Appearance:

MR RC JANI for Petitioner

MR MA BUKHARI, Ld AGP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 22/09/2000

ORAL JUDGEMENT

This Appeal is filed against the judgement and
order dated 26-3-1982 passed by Learned Assistant Judge,

Valsad at Navsari in Regular Civil Appeal No.58 of 1980, whereby the Learned Assistant Judge, Valsad at Navsari set aside the judgement and decree dated 28th July, 1980 passed by the Learned Civil Judge, (Senior Division), Valsad in Regular Civil Suit No.46 of 1978 after allowing the Appeal of Original Defendants. The Second Appeal is filed by the Original Plaintiff, Shri Vansda Taluka Vans. Kandarani Sahkari Mandali Ltd., Vansda.

2. As per the brief facts, the present Appellant being a Cooperative Society filed above Civil Suit in the Court of Civil Judge, Valsad stating that the Society had purchased 3000 bamboos from the Forest Officer on 20-3-1974 on payment of Rs.831.60ps and thereafter those bamboos were distributed for preparing baskets from the bamboos to its 10 members and the members delivered 5000 baskets on 30th January, 1975 and 5000 baskets on 3rd February, 1975 and 4000 baskets on 4th February, 1975, for which the Society had paid Rs.6,500/- to its members. Thereafter the Plaintiff applied to the Forest Department for granting an exit pass, but instead of granting the exit pass, the Forest Officer, on the contrary, suspected that 14000 baskets, as referred above, were not manufactured from the bamboos fall within the permit of 3000 bamboos and, therefore, after the proceedings, these 14000 baskets were confiscated by the concerned Forest Officer and offence also was registered against the Secretary of the Society, which came to be compounded as per Section 68 of the Indian Forest Act, by which a compensation of Rs.1,000/- was paid by the Society to the Government. Confiscated baskets made from the bamboos came to be auctioned by the Forest Officers. Therefore, the suit was initially filed for declaration of the bamboos as the property of the Plaintiff and injunction restraining the Forest Department from interfering and thereafter the suit was amended for the relief of the recovery of Rs.5,868.80ps being the price of the bamboos confiscated and auctioned by the Officers of the Forest. After full-fledged trial the Learned Civil Judge, vide his judgement and decree dated 28th July, 1980 was pleased to decree the suit of the Plaintiff to the extent of Rs.5,868.80ps, against which a Regular Appeal No.58/1980 was filed in the District Court, Valsad, and as aforesaid, by allowing this Appeal the Assistant Judge, Valsad set aside the decree passed by the Civil Judge, (Senior Division), Valsad and dismissed the suit after allowing the Appeal and hence this Second Appeal.

3. Learned Advocate for the Appellant, Mr. R.C. Jani and Learned AGP, Mr Bukhari for respondent State were heard at length. Learned Trial Court Judge, came to

believe that since the prosecution was not launched against the Plaintiff, the confiscation order was bad in law and therefore, the suit was decreed. While Learned Appellate Judge came to the conclusion that firstly the Plaintiff failed to prove that the goods i.e. 14000 confiscated baskets were of the property of the Plaintiff and that the powers of confiscation were independent of launching or compounding of offence regarding Forest produce and on this ground, the Learned Assistant Judge, Valsad reversed the decree and judgement.

4. Though it is argued at length that the Plaintiff had adduced the evidence that the 14000 baskets were made from the bamboos for which the permission was issued, but the Court below erred in this regard, as aforesaid, the first Appellate Court i.e. last Court of the fact finding came to the conclusion that the plaintiff could not prove that the 14000 baskets, subject matter of the suit, were the property of the Plaintiff. This, being exclusive the finding of fact, cannot be agitated in this Appeal and this issue becomes final as between the parties.

5. While admitting the Appeal no substantial question of law is framed, but according to me the only substantial question of law which is raised is whether the suit is maintainable and the power of the Forest Officers for confiscation under Section 61 of the Indian Forest Act can be indirectly challenged by filing a Civil Suit. The State of Gujarat has made amendments in Indian Forest Act and Section 61(a) to 61(g) are incorporated. Section 61(a) gives ample power to the Officer to confiscate goods which are suspected to be forest produce. As per Section 52 and odd words, a procedure is provided for deciding whether the goods which is seized is a Government property or not. Section 61(a) and 61(b) Gujarat Amendment Act has made the provisions regarding dealing with goods seized. Power of revision also is given to the Conservator of Forest under Section 61(c) Gujarat Amendment. A provision of Appeal to the Court of Sessions Judge is also provided under Section 61(d) Gujarat Amendment Act. Section 61(g) barred jurisdiction of Civil Code Tribunal or Authority in matters regarding Section 61(a).

6. Now the question arises that under Second Appeal whether the order passed by the competent Officer can be challenged by way of Civil Suit or not. It is also urged that Gujarat Amendment came into force in 1983 only and this incident is of 1974 to which the position before the Gujarat Amendment will be applicable. Though Gujarat

Amendment came into force in 1983 with retrospective effect, but if the issue is examined from view point of the position of law then applicable, then also the argument that without launching prosecution the goods cannot be confiscated by Forest Officer cannot find favour. This is so because when mechanism to deal with mudamal and remedy is provided in the Act itself and without resorting to that remedy, challenge of the same in the Civil Suit is bad in law. Firstly, plaintiff could have filed proper proceeding for mudamal before concerned Magistrate and thereafter a remedy of appeal is provided in Section 59 of the Indian Forest Act. Not only that but Section 74 protects Forest Officers that no suit lies against any public servant for anything done by him in good faith under this act. Therefore also Civil Suit for recovery of such type is barred.

7. Whether the procedure for the seizing and confiscating basket was properly followed or not is the subject not germane to the subject matter of the suit. Even if the procedure is not followed, the plaintiff would not be entitled to a money decree as prayed for. The Trial Court has apparently erred in this respect. Civil action regarding this is barred by Section 74 as aforesaid and thereafter Gujarat Amendment.

8. In sum and substance, a suit is filed for the recovery of money of the property, the plaintiff contended that the property was owned by the plaintiff, which was auctioned by the Forest Officer. Therefore, it was a simple suit for the money decree for the plaintiff's property seized and auctioned by the Forest Officer. Now, in Section 69 of the Indian Forest Act, which is provided that:

"69 Presumption that forest-produce belongs to Government:- When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved."

9. Therefore, when it is an admitted fact that the baskets which were seized of the forest produce, the presumption would be, the same is the property of the Government unless and until the contrary is proved that the same is not the property of the Government. Both the Courts below in their finding of fact came to the conclusion that the plaintiff failed to prove that the

said baskets seized by the Forest Officers were the property of the plaintiff. Therefore, the contrary is not proved according to Section 69 and the presumption remains that baskets were the property of the Government and the auction of the same, therefore, would be legal. Since this is the vital aspect of the dispute amongst the parties and a question of fact now cannot be agitated in this Appeal, and on the sole ground, this Appeal is required to be dismissed.

For the aforesaid reasons, this Appeal is meritless and requires to be dismissed.

In this view of the matter, Appeal stands dismissed with no order as to costs.

22-9-2000 (J. R. Vora, J.)

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